

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

4)
5 Edward J. Lynch)

MUR 6498

6)
7 Lynch for Congress and)

8 Edward J. Lynch in his official capacity as treasurer)
9

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FEDERAL ELECTION
COMMISSION

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11 **SECOND GENERAL COUNSEL'S REPORT**

12
13 **I. ACTIONS RECOMMENDED**

14 We recommend that the Commission: (1) Enter into pre-probable cause conciliation with
15 Edward J. Lynch and Lynch for Congress and Edward J. Lynch in his official capacity as
16 treasurer (the "Committee"); (2) Approve the attached conciliation agreement; and (3) Approve
17 the appropriate letter.
18

19 **II. BACKGROUND**

20 Following a Reports Analysis Division referral concerning Florida Congressional
21 candidate Edward Lynch's personal use of campaign funds and related reporting violations, the
22 Commission found reason to believe that Lynch knowingly and willfully violated 2 U.S.C.
23 § 439a(b) by using campaign funds for personal expenses, that the Committee knowingly and
24 willfully violated 2 U.S.C. §§ 434(b) and 439a(b), and authorized an investigation.¹

25 The ensuing investigation uncovered evidence of both personal use and reporting
26 violations that occurred throughout Lynch's campaigns for a general and special election in 2008
27 and 2010, respectively. Documentary and testimonial evidence demonstrates that Lynch used
28 the Committee's funds to pay for personal expenses, that he and the Committee failed to properly
29 account for legitimate campaign expenses by not keeping receipts or other records, that Lynch
30 did not reimburse the Committee for personal expenses, and that the Committee failed to report

¹ See Certification ¶¶ 2-3, MUR 6498 (Nov. 1, 2011).

1 many of the personal use expenses. The investigation also confirmed that Lynch never deposited
2 a \$50,000 candidate loan he disclosed in the Committee's reports filed with the Commission,
3 which caused the Committee to overstate its cash-on-hand balance in fifteen disclosure reports.

4 The evidence obtained during our investigation does not conclusively resolve whether
5 Lynch or others acted deliberately in violation of a known legal obligation, although certain
6 information may support a reasonable argument that Lynch acted with such intent. Nonetheless,
7 given the totality of the circumstances presented, we recommend that the Commission enter into
8 pre-probable cause conciliation with Lynch and the Committee on a non-knowing and willful
9 basis to resolve this long-running matter on terms that reasonably address the candidate and
10 Committee's conduct in violation of the Act.

11 III. INVESTIGATION

12
13 The investigation revealed a Committee in financial disarray, presided over by candidate
14 Edward Lynch, who transacted personal business using Committee funds and failed to establish
15 formal processes to enhance compliance with Commission regulations. We examined the
16 campaign's bank records and disclosure reports and engaged in protracted discovery
17 negotiations, initially with Lynch personally and then with his newly retained counsel. As we
18 previously indicated we intended to do, at the outset of the investigation we attempted to obtain
19 bank records directly from the Respondents on a voluntary basis. After substantial delays, we
20 obtained the records from SunTrust Bank through the use of a Commission subpoena.²

21 Following our receipt and review of the bank records, we interviewed six individuals who
22 were associated with the campaign and attempted to obtain additional information from the.

² After the Commission found reason to believe, Lynch offered to obtain the Committee's bank records himself and provide them. Following several months of communications with Lynch about the status of his efforts to comply with our request to no avail, we sought and obtained Commission approval for a subpoena to SunTrust Bank. See Certification, MUR 6498 (Mar. 14, 2012); Memorandum to the Commission, MUR 6498 (Mar. 8, 2012).

1 Respondents. We then sought to depose Lynch, but after further discussions Respondents agreed
2 that they would submit documents and Lynch's sworn affidavits in lieu of a deposition.³ Despite
3 our best efforts, some questions regarding certain transactions remain unanswered, as the
4 Committee did not retain records adequate to resolve them. Nevertheless, we believe that we
5 have gathered sufficient information to close the investigation and recommend entering into pre-
6 probable cause conciliation with Respondents.

7 **A. Committee Organization**

8 Lynch was an unsuccessful candidate for Florida's 19th Congressional District in 2008
9 and again in the 2010 Special Election. During his first campaign, Lynch filed a Statement of
10 Candidacy and Statement of Organization that designated himself as treasurer and custodian of
11 records for the Committee. He filed a new Statement of Candidacy when he decided to
12 participate in a 2010 special election to fill a vacancy resulting from Representative Robert
13 Wexler's retirement and did not change his designation as the Committee's treasurer and
14 custodian of records.

15 Lynch personally prepared and filed the Committee's disclosure reports with the
16 Commission during the 2008 election.⁴ During the 2010 election, Lynch relied on the assistance
17 of Christine Botta, a volunteer who helped prepare the Committee's disclosure reports, and later

³ In addition to the documentary subpoena to SunTrust Bank, the Commission issued a subpoena seeking both documents and testimony from Lynch. See Certification, MUR 6498 (Jan. 25, 2013); Memorandum to the Commission, MUR 6498 (Jan. 18, 2013); Memorandum to the Commission, MUR 6498 (Sept. 20, 2012). Upon his receipt of the subpoena, Lynch indicated that he might seek to invoke his rights under the Fifth Amendment and negotiations ensued. See E-mail from Walter Reynoso, Counsel to Lynch for Cong., to Ana Peña-Wallace, Attorney, FEC (May 15, 2013, 4:13 pm EST); Aff. of Edward J. Lynch (June 4, 2013) ("June Lynch Aff."); Aff. of Edward J. Lynch (Apr. 2, 2014) ("April Lynch Aff.").

⁴ April Lynch Aff. ¶ 3; E-mail from Walter Reynoso, Counsel to Lynch for Cong., to Ana Peña-Wallace, Attorney, FEC (May 15, 2013, 4:13 pm EST).

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1 Tim Dornblaser, who took over following Botta's departure.⁵ Lynch nonetheless continued to
2 serve as treasurer to his principal campaign committee during that period. In addition to Botta
3 and Tim Dornblaser, several other individuals provided staff support during the campaigns. We
4 interviewed the staff who appeared to manage most of the campaign-related activities of the
5 Committee, including Michael Solomon, the Committee's first campaign manager and only paid
6 staff member; Jessica Dornblaser, the second campaign manager (and spouse of Tim
7 Dornblaser); Lisa Rask, volunteer coordinator; and Christian Posada, who provided general
8 assistance.

9 **B. Lynch Controlled Access to the Committee's Finances and Records**

10 The investigation revealed that during each campaign Lynch exercised nearly exclusive
11 oversight of the Committee's funds and bank records and restricted his staff's access to records
12 reflecting the Committee's financial activities and status. For example, Solomon generally
13 understood that Lynch had loaned his campaign \$80,000, but Lynch refused to provide Solomon
14 access to bank records to allow Solomon to determine how much money was available for
15 campaign expenses.⁶

⁵ According to Christine Botta, she left the campaign in March 2010 as a result of her concerns about Lynch's personal use of campaign funds. See Aff. of Christine Botta ¶¶ 29-30 (June 3, 2013) ("Botta Aff."); First Gen. Counsel's Rpt. at 13, MUR 6498 (formerly RR 10L-04) ("First GCR").

⁶ Solomon, a former New York Police Department Special Investigator, joined the Committee in June 2008 as its only paid staff member. He was to be paid \$2,500 a month "to cultivate donors, plan fundraisers, and organize volunteers and grassroots efforts." Aff. of Michael Solomon ¶ 4 (May 29, 2013) ("Solomon Aff."). He did not file any FEC disclosure reports or have access to the bank account of the Committee. Solomon Aff. ¶¶ 8, 10. Solomon left the campaign in September 2008, after only three months, because he had not been paid for his services and was concerned about Lynch's management of the campaign's finances, among other factors. *Id.* ¶¶ 9-10; Report of Invest. of Michael Solomon (Sept. 17, 2012) at 2. Solomon also stated that, because Lynch never paid him for his services, he filed a lawsuit against Lynch and was awarded a \$5,000 judgment in 2009. When we last spoke with Solomon, Lynch had not yet paid the judgment amount. Solomon Aff. ¶ 11. With regard to the \$80,000 loan, Lynch told Solomon that he had withdrawn the funds to repay the loans, but without access to the bank records Solomon was never able to verify that information. *Id.* ¶ 9. Solomon also told us that Lynch told him he had made the original loans to the Committee simply so that the disclosure reports would indicate that the campaign was raising money. *Id.*

1 Other members of the campaign staff agreed that Lynch controlled the Committee's
2 finances. The Committee's second campaign manager, Jessica Dornblaser, and her husband,
3 Tim Dornblaser, were the most active volunteers for the campaign and worked closely with
4 Lynch.⁷ Posada described Lynch and the Dornblasers as the "backbone" of the campaign,
5 handling its day-to-day operations.⁸ The Dornblasers told us that Lynch was "the only person
6 who handled any of the campaign's finances" and that he had sole access to the debit card for the
7 campaign account.⁹ Similarly, even though Jessica Dornblaser arranged for campaign
8 advertising, she was not provided access to any information about the costs associated with those
9 activities.¹⁰

10 Both Tim Dornblaser and Posada declined Lynch's offers to serve as the Committee's
11 treasurer; Lynch later asked Christine Botta to assist him in performing some of the treasurer's
12 duties for the second campaign in the Fall of 2009.¹¹ Botta's duties included bookkeeping,

⁷ Report of Invest. of Christian Posada at 1-2 (Aug. 13, 2012) ("Posada ROI"); Report of Invest. of Lisa Rask at 1 (Sept. 10, 2012) ("Rask ROI"); Solomon Aff. ¶ 5. Ms. Dornblaser's duties primarily involved "scheduling, strategy, planning, fundraisers, advertising, and general organization," daily meetings with Lynch and travel with Lynch to meet and greet and fundraisers. Aff. of Jessica Dornblaser ¶¶ 6, 9, 10 (June 7, 2013) ("J. Dornblaser Aff."); Botta Aff. ¶¶ 8, 18. Tim Dornblaser told us that he was a "jack of all trades," making fundraising phone calls, working with data, developing campaign issues, speaking on behalf of Lynch at certain events, and later, stepping in to prepare and file the Committee's disclosure reports with the Commission. Report of Invest. of Tim Dornblaser at 1-2 (May 3, 2012) ("T. Dornblaser ROI").

⁸ Posada ROI at 1-2. Posada, who is an attorney and accountant, initially agreed to assist the campaign with reviewing bank statements to ascertain whether the Committee could cover expenses, but stopped assisting in this capacity after only a short time as a result of responsibilities with his legal practice. He did not recall whether he noticed Lynch's loans on the bank statements and was unable to identify which bank statements he reviewed. Posada did not participate in the administration of the campaign, had no signature authority on the Committee's bank account, did not write checks, and did not pay bills on behalf of the Committee. *Id.* at 1.

⁹ J. Dornblaser Aff. ¶ 8; T. Dornblaser ROI at 3.

¹⁰ J. Dornblaser Aff. ¶ 17.

¹¹ Tim Dornblaser stated that Lynch asked him to be treasurer for the second campaign, but that he declined because he felt that he did not have enough time to read the FEC regulations. T. Dornblaser ROI at 1-2. Both Dornblasers remain in contact with Lynch as they all work in the construction industry. Jessica Dornblaser is an architect and "works for Lynch on occasion running construction permits," and Tim Dornblaser works for a construction company "that works closely with Lynch's company." *Id.* at 4; J. Dornblaser Aff. ¶ 20.

1 collecting checks, paying bills, and completing and filing the Committee's disclosure reports
2 with the Commission.¹² Like other volunteers, she lacked signature authority for the
3 Committee's bank account, so she "prepared the checks to make disbursements and Lynch
4 signed them."¹³ She confirmed that Lynch was the only person with access to the Committee's
5 debit card.¹⁴ Lynch also restricted Botta's access to the Committee's bank records. Botta stated
6 that, despite her requests, Lynch never provided her with complete copies of the Committee's
7 bank records, and as a result, she was never able to reconcile those account balances with the
8 Committee's disclosure reports to the Commission.¹⁵

9 No one involved with the campaign except Botta appeared to have prior campaign
10 experience. Jessica Dornblaser stated that none of them "was familiar with how to run a
11 campaign," and that she never reviewed Commission materials or attended training.¹⁶ Posada,
12 Tim Dornblaser, and Rask also stated that they had no prior campaign experience, and that the
13 campaign was a learning experience for all of them; Rask told us that Botta was the only one
14 who seemed well versed with Commission regulations.¹⁷

¹² Botta Aff. ¶¶ 4-5.

¹³ *Id.* ¶ 5. Volunteer coordinator Lisa Rask, who started working for the second campaign around December 2009 or January 2010, also confirmed that, although Botta handled the Commission filings, basic office management, and prepared checks for disbursements, Lynch was the exclusive signatory on the Committee's bank account. Rask ROI at 1.

¹⁴ Botta Aff. ¶ 5.

¹⁵ *Id.* ¶¶ 13-14.

¹⁶ J. Dornblaser Aff. ¶¶ 3, 5.

¹⁷ Posada ROI at 2; T. Dornblaser ROI at 1; Rask ROI at 2. Rask believed that Lynch, the Dornblasers, and Botta made all the decisions regarding how the campaign operated, including all campaign spending, but noted that there were many disagreements between them. Rask ROI at 2. Rask further opined that Lynch did not adequately consider Botta's experience and generally took advice on campaign matters from Ms. Dornblaser instead.

C. Lynch Used Campaign Funds to Pay for Personal Expenses

The Federal Election Campaign Act of 1971, as amended (the "Act") affords federal candidates and their campaign committees broad latitude in the disposition of their campaign funds.¹⁸ Nonetheless, campaign funds cannot be converted to "personal use" by "any person."¹⁹ Conversion to personal use occurs when funds in a campaign account are used "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office."²⁰ The Act and Commission regulations further set forth certain uses of campaign funds that constitute conversion to personal use *per se*, including utility payments, noncampaign-related automobile expenses, and health club dues, among others.²¹ The Commission's regulations also require committees to maintain and preserve for three years a log or "other record" of the dates and expenses involving any use of campaign funds for both personal- and campaign-related purposes — that is, "mixed use" expenses.²²

¹⁸ See 2 U.S.C. § 439a(a).

¹⁹ *Id.* § 439a(b)(1).

²⁰ *Id.* § 439a(b)(2); 11 C.F.R. § 113.1(g).

²¹ See 2 U.S.C. § 439a(b)(2)(A)-(I); 11 C.F.R. § 113.1(g); MUR 5895 (Meeks for Congress) (finding candidate and committee violated Act by, *inter alia*, paying for personal trainer expenses and vehicle lease expenses with campaign funds). In adopting the personal use regulations, the Commission explained that "[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use." Explanation and Justification for Final Rules for Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995). The *per se* list of expenses, however, "are automatically considered to be personal use" that a committee "cannot pay for." See FEC CAMPAIGN GUIDE FOR CONG. CANDIDATES AND COMMS. at 54 (Apr. 2008).

²² 11 C.F.R. § 113.1(g)(8).

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1 Based on the record obtained as a result of the investigation, it appears that as much as
2 \$53,500 of the Committee's funds may have been converted to personal use.²³ We cannot
3 ascertain a precise figure, however, because the Committee failed to log or preserve documents
4 concerning relevant transactions, many of which involved apparent "mixed-use" expenses.
5 Given the lack of records reflecting a specific purpose for particular transactions, the number of
6 transactions involved, and other gaps in the witnesses' recollections, we cannot allocate those
7 mixed-use expenses between the Committee and Lynch personally with reasonable confidence.

8 We note that our initial review of the Committee bank records in fact suggested a higher
9 potential personal-use figure, as much as \$80,000. Those expenses included gasoline charges,
10 meals, payments to the Internal Revenue Service ("IRS"), and miscellaneous payments to
11 vendors that on their face lacked an apparent nexus to any campaign purpose.²⁴ As a result of
12 further investigation, however, we were able to reduce that amount based on circumstantial
13 information suggesting a possible campaign-related purpose or otherwise reflecting that the
14 expenses would not constitute personal-use by any "person" under the Act.

15 Specifically, we obtained a list of locations where campaign events were held, copies of
16 Facebook photos documenting campaign events, calendar entries for Jessica and Tim
17 Dornblaser, and flyers for campaign fundraisers held at specific restaurants.²⁵ We therefore
18 reduced the personal use total by the \$3,309.75 in expenses that may have been incurred in
19 connection with those events based on their timing and location. Lynch also provided copies of

²³ When the Commission found reason to believe that Lynch and the Committee converted campaign funds to personal use, the limited number of bank statements available at the time reflected only \$6,552.90 in suspected personal use expenses. See First GCR at 4-5, 10-11, 14; Factual & Legal Analysis at 4-5, 10, MUR 6498 ("F&LA").

²⁴ See SunTrust Bank Subpoena Resp. (Mar. 27, Aug. 21, Sept. 13, 2012) ("SunTrust Resp.").

²⁵ See June Lynch Aff. at 5-8, Exs. B, C. The Committee was unable to produce invoices documenting these events, so we relied on witness recollection and other corroborating evidence to back out many of these expenses. See, e.g., J. Dornblaser Aff. ¶ 9 (providing information on fundraisers and meet and greets held by the campaign).

1 utility bills and account information related to the campaign office that allowed us to further
2 reduce the personal use balance by \$1,766.56.²⁶ Finally, we also subtracted \$1,620.65 in
3 campaign disbursements to certain vendors that witnesses or other information suggested had
4 provided campaign-related goods and services.²⁷ We also determined that \$21,766.77 in
5 Committee payments to the IRS were in the form of IRS-initiated tax levies and not payments
6 authorized by Lynch, and therefore have excluded them from the total personal use figure.²⁸

7 Accordingly, based on those considerations, we conclude that slightly more than \$53,500
8 in Committee funds may have been converted to personal use. Of that amount, \$5,000 involves
9 uncontroverted personal use expenses; over \$18,000 constitutes unallocated mixed-use payments
10 for vehicles, cell phones, and restaurants and meals for which no records reflect what portion
11 related to campaign purposes; and another \$30,530 consists of unallocated cash withdrawals,
12 again-without clarifying documentation.

13 Lynch submitted sworn statements describing some of the relevant events and conceding
14 that he spent "over \$5,000" in campaign funds for personal expenses, including seven months of
15 a recurring gym membership fee, his home utility bill, an emergency room visit, a driver's
16 license fee, payment on a personal loan, a gun holster, shooting range fees, and retail and

²⁶ June Lynch Aff. at 2 and Ex. A.

²⁷ See J. Dornblaser Aff. ¶ 15; T. Dornblaser ROI at 3; see E-Mail from Walter Reynoso, Counsel to Lynch for Cong., to Ana Peñia-Wallace, Attorney, FEC (May 15, 2013, 4:13pm EST).

²⁸ The investigation determined that the IRS seized \$21,766.77 from the Committee's account in May and August 2008. Lynch concedes that the funds were levied "to satisfy [his] personal income tax obligations" and that he did not reimburse the Committee for the amount of the payments. April Lynch Aff. ¶ 7. It appears that Lynch had initially opened the campaign account using his social security number rather than a federal committee identification number. Lynch Resp. at 1 (June 24, 2010). Lynch later closed that account and opened a new campaign account using the Committee number. See SunTrust Resp. (Mar. 27, Aug. 21, Sept. 13, 2012) (including statements and other bank records for three accounts that the Committee held). Because Lynch did not initiate these disbursements to satisfy his personal tax obligations — indeed, a federal government agency seized the funds — we do not include them among the personal use totals discussed above. See 2 U.S.C. §§ 439(b)(1), 431(11) (prohibiting conversion of campaign funds "by any person to personal use," but excluding "any authority of the Federal Government" from the definition of "person"). Nor are we aware of any legal obligation imposed by the Act or Commission regulations requiring Lynch to reimburse the Committee the amount that was seized.

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1 clothing purchases.²⁹ Lynch explained in his affidavit that "[i]n some instances the payments
2 were made erroneously because I did not have a personal credit card available to make the
3 purchase or because I inadvertently provided the wrong account number to the vendor. In other
4 instances, I erroneously believed the campaign could fund certain expenses."³⁰

5 As to mixed-use payments for vehicle expenses, cell phone payments, meals, and cash
6 withdrawals, neither witnesses nor Lynch could provide receipts or documentation
7 demonstrating what portion related to activities on behalf of the campaign, and the Committee
8 failed to keep a log of such expenditures.³¹ The Committee's bank records reflect \$6,311.87 in
9 vehicle expenses. Lynch acknowledges spending that amount for gasoline, tolls, and parking and
10 that the "expenses were for [his] personal vehicle that [he] also used for the campaign."³²

11 Absent a basis for the Commission to conclude that the personal use of the vehicle amounted to a
12 *de minimis* use, the Commission's regulations require "the person(s) using the vehicle for
13 personal activities [to] reimburse the campaign account within thirty days for the expenses
14 associated with the personal activities."³³ Evidence confirms that Lynch used the vehicle for
15 both personal and campaign purposes but failed to allocate or document those expenses at the

²⁹ April Lynch Aff. ¶ 4.

³⁰ *Id.* ¶ 4.

³¹ See 11 C.F.R. § 113.1(g)(8) (requiring committees to keep a contemporaneous log of such mixed-use expenses that must be preserved for three years after the report disclosing the disbursement is filed).

³² April Lynch Aff. ¶ 6.

³³ See 11 C.F.R. § 113.1(g)(1)(ii)(D); see also Certification ¶ 1, MUR 6585 (Mar. 6, 2014) (approving conciliation agreement with admissions to personal use violations involving the payment of automobile expenses for a vehicle that was used for mixed campaign-related and personal purposes where the Respondents failed to keep records of the expenses related to the personal use); Conciliation Agreement ¶ 9, MUR 6585 (Edolphus Towns).

1 time and did not reimburse the Committee for any expenses related to the personal use of the
2 vehicle.³⁴

3 Similarly, the Committee disbursed a total of \$6,398.27 for cell phone expenses. Botta
4 alleged that the campaign paid for Lynch's and his wife's cell phone bill.³⁵ Lynch admits that
5 the cell phone expenses involved "mixed use" and that the Committee paid the bills in full
6 without any formal allocation method.³⁶ Lynch asserted that the "campaign" decided "that the
7 most cost effective solution was to use [Lynch's] existing, unlimited plan with [Lynch's] cellular
8 phone as well as the one [his] wife had."³⁷ Whatever the commercial rationale for the
9 campaign's decision to use the candidate's personal cell phone service for campaign purposes, it
10 appears that the cell phone expense would have existed irrespective of Lynch's campaign.
11 Further, Lynch has been unable to describe his "mixed use" to explain what percentage of the
12 cell phone use consisted of campaign use, his or his wife's personal use, or Lynch's business use.
13 As such, unless the primary use of the phone was campaign-related — and Lynch does not assert
14 it was and the fact that the cell phone service plan pre-existed the campaign reasonable suggests
15 the contrary — he should have reimbursed the campaign for the pro-rated amount of the cost of

³⁴ See J. Dornblaser Aff. ¶ 10; April Lynch Aff. ¶ 6.

³⁵ Botta Aff. ¶ 16.

³⁶ April Lynch Aff. ¶ 6. Lynch also acknowledged that the cell phone account holder was actually his company, Deleon Industries, which raises the possibility that he used the cell phone for his personal and business use, in addition to campaign use. June Lynch Aff. at 2.

³⁷ E-mail from Edward J. Lynch to Ana Peña-Wallace, Attorney, FEC (Feb. 3, 2012, 5:20 pm EST); RTB Resp. at 1.

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1 the service to account for his and his wife's regular personal use of the cell phones, and possibly
2 Lynch's use of the cell phones for his business.³⁸

3 Regarding restaurant and meal expenses, the Commission determines on a case-by-case
4 basis whether those expenses would exist irrespective of the candidate's campaign to determine
5 whether they were for personal use.³⁹ After reducing the total amount of those expenses by the
6 amounts associated with specific campaign events based on information obtained during the
7 investigation, it appears that the campaign disbursed \$5,559.71 for restaurants and meals for
8 which the campaign-related purpose remains unclear. Lynch represents that the meal expenses
9 were related to the campaign: he bought food for volunteers, "had meals with the campaign staff
10 after campaign events or at the campaign office," and that there were "CAMPAIGN related
11 meals that [he] personally paid for and did not note."⁴⁰ But Lynch was unable to provide records
12 relating to any of the \$5,559.71 in meal expenses we have identified.⁴¹ Further, both Botta and
13 Rask questioned the campaign's payment of such meals. Botta stated in her affidavit that Jessica
14 Dornblaser and Lynch went out to lunch on a daily basis and paid for those meals using

³⁸ Although the Commission has not directly addressed allocation of cell phone expenses in prior matters under review, in cases involving fixed expenses such as vehicle leases the Commission still nevertheless requires that campaigns maintain a log or other record associated with the use of the vehicle for personal activities so that the costs for the mixed use of those fixed expenses may be allocated. See Final Audit Rpt. on Meeks for Congress at 17-18, MUR 5895 (Meeks for Congress).

³⁹ 11 C.F.R. § 113.1(g)(ii).

⁴⁰ April Lynch Aff. ¶ 6 (emphasis in original).

⁴¹ Commission regulations require committees to keep an account and records of disbursements for three years after the report for which records and account relate; and a log or record of mixed-use expenses for three years after the report disclosing the disbursement is filed. 11 C.F.R. §§ 102.9(c), 113.1(g)(8). Additionally, respondents are instructed to preserve Committee records upon being notified of the Commission's reason to believe finding. Because Lynch was notified of the Commission's reason to believe finding within the three year recordkeeping-time period, Lynch should have kept all available records relating to these expenses. See Letter from Cynthia Bauerly, Chair, FEC, to Edward J. Lynch (Nov. 7, 2011) (advising respondent that he has a "legal obligation to preserve all documents, records and materials relating to this matter").

1 campaign funds.⁴² Rask recalls that there were arguments at the campaign office about how
2 campaign funds were being spent because Lynch and Jessica and Tim Dornblaser used
3 Committee funds for lunch regularly.⁴³ Rask also felt uncomfortable when the campaign paid
4 for one of her meals because she felt that it was not an appropriate use of campaign funds.⁴⁴
5 Further, it would seem that daily meal expenses for the candidate would exist irrespective of the
6 fact of the campaign.⁴⁵ Thus, it remains unclear what campaign purpose the outstanding balance
7 of restaurant and meal expenditures served, while Lynch's practice of making such expenditures
8 on a daily basis and the lack of records to substantiate the connection of any questioned meal and
9 restaurant expense tends to suggest that a significant part of the \$5,559.71 in restaurant and meal
10 expenses may have been for personal use.

11 Finally, the Committee's bank records show \$30,530 in cash withdrawals through ATM
12 and bank teller withdrawals for which there is no documentation reflecting the purpose of the
13 withdrawn funds. The Act and Commission regulations require that committees make all
14 disbursements by check drawn on the committee's designated account in order to maintain a
15 record of a campaign's spending.⁴⁶ Lynch nonetheless made over forty withdrawals from the
16 Committee account without issuing a check made payable to him. Those withdrawals ranged
17 from as low as \$42 to as high as \$9,000, but most were \$100 or more. Lynch acknowledges that

⁴² Botta Aff. ¶ 8. Botta explained that she took note of, and offense to, Lynch's campaign-funded daily meals because she drove 100 miles each day to volunteer for the campaign and never requested reimbursement for her daily gas or vehicle expenses. *Id.*

⁴³ Rask ROI at 2-3.

⁴⁴ *Id.* at 3.

⁴⁵ 11 C.F.R. § 113.1(g)(1)(ii). The Commission's campaign guide explains that "[c]ampaign funds may be used to pay for meals during face-to-face fundraising events. By contrast, a candidate may not use campaign funds to take his or her family out to dinner." FEC CAMPAIGN GUIDE FOR CONG. CANDIDATES AND COMMS. at 56 (Apr. 2008).

⁴⁶ 2 U.S.C. § 432(h)(1); 11 C.F.R. § 102.10.

1 he withdrew that amount in cash from Committee bank accounts and that he failed to maintain
2 any records relating to the withdrawals, such as withdrawal slips or records reflecting the
3 disposition of the cash.⁴⁷ Lynch claims that he viewed the cash as repayment of his personal
4 loans to the Committee, but only half of Lynch's cash withdrawals were reported as loan
5 repayments on the Committee's disclosure reports.⁴⁸ Lynch similarly claims that his use of the
6 Committee's bank debit card for many personal purchases were attempts to pay his loans back to
7 him "in as small increments as possible" and to ensure that the campaign would have a record of
8 those transactions.⁴⁹ But his withdrawal of over \$30,000 in cash from the Committee accounts
9 without retaining any documentation and with some withdrawals exceeding \$1,000 each belies
10 his recordkeeping claims and further appears to violate the Act's restrictions on the use of petty
11 cash.⁵⁰

12 **D. The Committee Filed Inaccurate Reports With the Commission**

13 The Act requires committee treasurers to file reports of receipts and disbursements in
14 accordance with the provisions of 2 U.S.C. § 434.⁵¹ Those reports must include, among other
15 things, the amount of cash on hand at the beginning and end of a reporting period and the total
16 amount of receipts and disbursements.⁵² The Act requires accurate reporting of the total amount

⁴⁷ April Lynch Aff. ¶ 5.

⁴⁸ *Id.* ¶ 5. Those putative loan repayments also were reported inaccurately — some were reported on schedule B as receipts and some on schedule C as debts, but not both as Commission regulations require. *See* 11 C.F.R. § 104.3(a), (d).

⁴⁹ April Lynch Aff. ¶ 5; Lynch Resp. at 2-3.

⁵⁰ *See* 2 U.S.C. § 432(h)(2).

⁵¹ *See id.* § 434(a)(1) and 11 C.F.R. § 104.1(a).

⁵² *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3.

1 of loans made or guaranteed by the candidate and the repayment of those loans.⁵³ Committees
2 are also required to disclose itemized and unitemized breakdowns of disbursements and to
3 disclose the name and address of each person who has received any disbursement in an aggregate
4 amount or value in excess of \$200 within the calendar year, together with the date and amount of
5 any such disbursement.⁵⁴

6 Every report that the Committee filed with the Commission contained reporting errors.
7 The Committee ceased filing reports with the Commission in December 2010. The Committee
8 failed to report almost \$70,000 in disbursements, including many of the personal use expenses
9 described above, the IRS tax levies, reimbursements to campaign staff, and cash withdrawals.
10 The Committee also reported a \$50,000 candidate loan that was never actually deposited into the
11 campaign's account.⁵⁵ These reporting errors further resulted in cash-on-hand discrepancies for
12 every disclosure report that the Committee filed, ranging from \$30,959.80 to \$83,067.36. The
13 following table identifies the Committee's reported receipts and disbursements for each election
14 cycle with the information reflected in the relevant bank account statements for each period:

⁵³ 2 U.S.C. § 434(b)(2)(G); 11 C.F.R. § 104.3(a)(3)(vii)(B), (b)(2)(iii)(A).

⁵⁴ See 2 U.S.C. § 434(b)(5), (6); 11 C.F.R. § 104.3(b).

⁵⁵ See SunTrust Resp. (Aug. 21, 2012) (including bank statement covering March 14, 2008 to April 11, 2008). Also, the Committee's reports disclose a loan repayment of \$27,250 made on July 30, 2010 that Lynch calls a "reconciliation of previous cash withdrawals." April Lynch Aff. ¶ 8. But Lynch does not specify the dates of the cash withdrawals that relate to this specific loan repayment. Additionally, the Committee disclosed a number of disbursements to Lynch that, according to the bank records, were actually made directly to vendors, such as P.F. Gyms, for personal use expenses.

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Table 1. — Reporting Errors by Category and Election Cycle

	Receipts	Contributions	Candidate Loans	Disbursements
2008 Election Cycle				
Reported	\$136,707.00	\$56,020.00	\$80,687.00	\$61,352.00
Actual	\$44,705.05	\$14,480.39	\$29,800.00	\$25,365.81
2010 Election Cycle⁵⁶				
Reported	\$131,628.00	\$106,277.00	\$19,500.00	\$128,884.00
Actual	\$151,616.81	\$77,329.02	\$19,500.00	\$56,930.33

Lynch asserts that, because he had loaned significant sums to the campaign, he essentially reimbursed himself incrementally by paying for personal expenses with campaign funds and reporting the disbursements as loan repayments.⁵⁷ But the majority of personal use expenses the investigation uncovered were not reported at all. For example, the Committee disclosed some payments to PF Gyms as disbursements to Lynch for the purpose of "loan repayments," but other payments to the gym were not disclosed. The Committee also failed to report numerous other personal expenses paid with Committee funds, such as Lynch's purchase at Build-A-Bear, his shooting range and gun holster fees, payment of his driver's license fee, and the personal tax levies from the Committee's account.⁵⁸

The Committee further reported a \$50,000 loan from Lynch to the Committee, but the bank records reflect that Lynch never deposited those funds into the Committee account. Lynch contends that his intent was to provide the Committee with a line of credit for use as needed, but

⁵⁶ The Committee's last report filed with the Commission was the 2010 October Quarterly Report, which covered the period of July 1, 2010 through September 30, 2010. Therefore, for purposes of this comparison this table does not include receipts the Committee received after September 30, 2010.

⁵⁷ See Lynch Resp. at 2.

⁵⁸ See Committee's 2008 July and October Quarterly Reports; April Lynch Aff. ¶ 7.

1 he did not want to actually deposit the funds into the Committee account.⁵⁹ Again, Lynch was
2 not always forthcoming about this purported loan either with us or with the Committee staff. For
3 instance, Botta and Solomon both claim that Lynch told them he had deposited loans into the
4 campaign account but later withdrew them, which bank records reflect had not occurred.⁶⁰
5 Lynch initially informed us that he "set aside a loan of another \$50,000" and "made it available
6 to the campaign," but later conceded that he never in fact made such a loan.⁶¹

7 Botta attempted to correct the Committee's disclosure reports, but claims that she could
8 not reconcile the reports with the bank account because Lynch failed to provide her adequate
9 information to do so, including access to certain bank statements of the Committee.⁶² As such,
10 she was unaware that Lynch failed to deposit the purported \$50,000 loan or that the IRS had
11 levied \$21,766.77 of the Committee's funds. Botta asserts that she tried to explain to Lynch the
12 need for the receipts and bank records to correspond with the Committee's reports, but Lynch
13 allegedly responded that "the FEC will never see his bank records nor would he [*sic*] ever be
14 audited."⁶³ She also told Lynch that personal use disbursements were not permitted, but Lynch

⁵⁹ April Lynch Aff. ¶ 8. Separately, Lynch's counsel represented to us that because the IRS had levied some of the campaign's funds to satisfy Lynch's IRS tax obligations, Lynch wanted to deposit cash into the campaign account only on an as-needed basis to avoid additional levies, while simultaneously reporting the loan to signal that he was willing to allocate up to \$50,000 for the campaign.

⁶⁰ Botta Aff. ¶ 26; Solomon Aff. ¶¶ 8-9.

⁶¹ Lynch Resp. at 1; E-mail from Edward J. Lynch to Ana Peña-Wallace, Attorney, FEC (Feb. 3, 2012, 5:20 pm EST).

⁶² Botta Aff. ¶ 14. Botta also filed FEC disclosure reports covering January through June 2009, which Lynch previously failed to file with the Commission. According to Botta, Lynch said he was under the impression that he did not have to file reports after he lost the 2008 general election. *Id.* After he lost the 2010 election, Lynch stopped filing reports with the Commission once again. He was assessed \$7,807 in fines under the Commission's Administrative Fines Program, but those fines were written off as unpaid after the Department of Treasury could not collect payment. According to Botta, upon notifying Lynch that he had to file reports and would need to pay fines the Commission had assessed for his failure to file certain disclosure reports, Lynch stated that he would not be paying the fines. *Id.* ¶ 9.

⁶³ *Id.* ¶ 14.

1 would allegedly "instruct [her] not to report these to the FEC, or to report the disbursements as
2 loan repayments," that "he did not care that the expenses were not permitted," and "continued to
3 make those types of disbursements against [her] advice."⁶⁴

4 Lynch denies Botta's allegations. According to Lynch, Botta "was working against the
5 campaign."⁶⁵ He claims that she was a plant by the opposing party intent on sabotaging his
6 campaign, and that she stole bank documents that she then distributed to his opponents when she
7 left the campaign.⁶⁶ Lynch also raises the possibility that Botta was disgruntled because she may
8 not have been sufficiently involved with campaign strategy and that she was stressed due to
9 family issues, which could have contributed to what he believed to be false allegations.⁶⁷ But
10 none of the other witnesses with whom we spoke expressed concerns over Botta's intentions
11 with the campaign. Further, even crediting Lynch's assertion that Botta is biased or otherwise
12 unreliable does not explain the substantial personal use and reporting violations that occurred
13 before she joined the campaign.

14 **E. A Non-Knowing and Willful Resolution is Appropriate in this Matter**

15 The Act prescribes additional monetary penalties for violations that are knowing and
16 willful.⁶⁸ A violation of the Act is knowing and willful if the "acts were committed with full

⁶⁴ *Id.* ¶¶ 10-11, 13-14, 20. Botta avers that she tried to establish reimbursement procedures for the campaign, which appear to have been rarely used by the Committee staff and were ignored by Lynch. *Id.* ¶ 12. Rask recalls following Botta's reimbursement process at least once but did not know whether any other volunteers followed the procedure as well. Rask ROI at 1-2.

⁶⁵ RTB Resp. at 1.

⁶⁶ Lynch Resp. at 3-4; *see also* Posada ROI at 2 (indicating that Lynch had a falling out with Botta and Lynch told him that Botta had ulterior motives of sabotaging his campaign and damaging his reputation).

⁶⁷ Lynch Resp. at 3-4; E-mail from Edward J. Lynch to Ana Peña-Wallace, Attorney, FEC (Feb. 3, 2012, 5:20 pm EST).

⁶⁸ *See* 2 U.S.C. §§ 437g(a)(5)(B), 437g(d).

1 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”⁶⁹ But
2 this does not require proving knowledge of the specific statute or regulation the respondent
3 allegedly violated.⁷⁰ Instead, it is sufficient to demonstrate that a respondent “acted voluntarily
4 and was aware that his conduct was unlawful.”⁷¹ This may be shown by circumstantial evidence
5 from which the respondents’ unlawful intent reasonably may be inferred.⁷² For example, a
6 person’s awareness that an action is prohibited may be inferred from the circumstances, such as
7 “the [person’s] elaborate scheme for disguising their . . . political contributions.”⁷³

8 Lynch denies that he violated the Act deliberately or with knowledge that his conduct
9 was prohibited by law. The investigation uncovered some circumstantial evidence suggesting
10 that Lynch may have acted in disregard of a known legal obligation — including his pattern of
11 cash withdrawals, his apparent effort to restrict staff access to campaign accounts and records,
12 and his failure to heed Botta’s claimed advice that he could not use Committee funds for

⁶⁹ See 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

⁷⁰ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 2013 WL 124119, *5 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

⁷¹ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

⁷² *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁷³ *Id.* at 214-15. As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

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1 personal purposes, among other things.⁷⁴ Nonetheless, all of the relevant campaign witnesses
2 consistently describe the staff generally, and Lynch in particular, as unfamiliar with campaign-
3 finance requirements and none of the witnesses could provide any direct evidence that Lynch
4 converted funds knowingly and willfully. Lynch further has indicated that he would be willing
5 to admit to the non-knowing and willful violations described here to settle this matter prior to a
6 finding of probable cause to believe. Accordingly, given the evidence developed to date and
7 other information concerning Lynch's limited financial resources described below, we conclude
8 that seeking to resolve this matter without requiring Lynch to admit to a knowing and willful
9 violation of the law would appropriately address his misconduct while preserving significant
10 additional Commission resources in pursuing this administrative matter to a conclusion.

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Additionally, some of Lynch's representations are inconsistent with the statements of some witnesses. For example, Lynch initially stated that campaign funds were used to make a purchase at Build-A-Bear as a thank you gift for his daughter's extensive work on the campaign but all of the other witnesses with whom we spoke indicated that neither Lynch's wife nor children were significantly involved with his campaign. See RTB Resp. at 2 (stating that his 11-year old daughter spent countless hours helping out); see E-mail from Walter Reynoso, Counsel to Lynch for Congress, to Ana Peña-Wallace, Attorney, FEC (May 15, 2013, 4:13 pm EST) (indicating that the teddy bear was "a gift to one of the volunteers"); c.f., Botta Aff. ¶ 17; T. Dornblaser ROI at 3; Posada ROI at 2; Rask ROI at 2. Botta averred that this purchase, made in the month of December, was either a gift for Lynch's daughter's birthday or for Christmas. Botta Aff. ¶ 21. Lynch further asserted that he permitted certain campaign workers to use the campaign debit card "for minor campaign related matters on a few occasions," but that contradicts the claims of his campaign staff, all of whom state that Lynch maintained sole control over the Committee's debit card. April Lynch Aff. ¶ 3; *supra* Sec. III.B.

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10 **V. RECOMMENDATIONS**

11 1. Enter into conciliation, prior to findings of probable cause to believe, with Edward J.
12 Lynch and Lynch for Congress and Edward J. Lynch in his official capacity as treasurer.

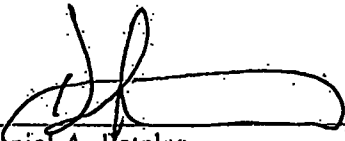
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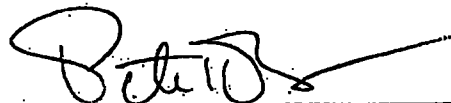
14 2. Approve the attached Conciliation Agreement.

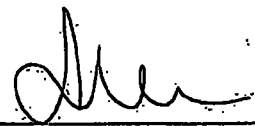
100-440340-100

3. Approve the appropriate letter.

Date 7/31/14


Daniel A. Petalas
Associate General Counsel for Enforcement


Peter G. Blumberg
Assistant General Counsel


Ana J. Peña-Wallace
Attorney

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